

UNAPPROVED
VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS
BOARD MEETING MINUTES

The Virginia Board of Funeral Directors and Embalmers convened for a board meeting on Monday, July 16, 2012 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room #2, Henrico, Virginia.

BOARD MEMBERS PRESENT

Blair Nelsen, FSP, President
Junius Williams, Citizen Member, Vice-President
Christopher P. Vincent, FSP, Secretary-Treasurer
Robert B. Burger, Jr., FSP
Randolph T. Minter, FSP
Michael J. Leonard, FSP
Walter Ball, Citizen Member
Eric V. Wray, II, FSP

BOARD MEMBERS PRESENT FOR ALL OR PART OF THE MEETING

Robert Oman, FSP

DHP STAFF PRESENT FOR ALL OR PART OF THE MEETING

Lisa R. Hahn, Executive Director
Lynne Helmick, Deputy Executive Director
Dr. Reynolds-Cane, Agency Director
Missy Currier, Board Operations Manager

BOARD COUNSEL

Erin Barrett, Assistant Attorney General

QUORUM

With 8 members present a quorum was established.

GUESTS PRESENT

Barry D. Robinson, Virginia Morticians Association
Karen McPherson, Virginia Morticians Association
Meredyth Partridge, Regulatory Support Services, Inc.
Bo Keeney, Independent Funeral Homes of Virginia
Bruce Keeney, Independent Funeral Homes of Virginia
Lacy Whittaker, Virginia Funeral Directors Association
Tripp Perrin, SCI

CALL TO ORDER

Blair Nelsen, President, called the meeting of the Virginia Board of Funeral Directors and Embalmers to order at 10:10 a.m.

ORDERING OF AGENDA

The agenda was accepted as ordered.

ACCEPTANCE OF MINUTES

Upon a motion by Mr. Minter and properly seconded by Mr. Ball, the Board voted to accept the following Meeting Minutes:

- Board Meeting – April 24, 2012
- Legislative/Regulatory Meeting – April 12, 2012

The motion carried unanimously.

INFORMAL CONFERENCES HELD

Mr. Nelsen shared that informal conferences were held on the following days and that the minutes are located on the board's website and on regulatory Townhall.

- (4) – held on April 24, 2012
- (2) - held on June 6, 2012

PUBLIC COMMENT PERIOD

There was no public comment.

AGENCY DIRECTORS REPORT – Dr. Reynolds-Cane

Dr. Reynolds-Cane addressed the board with brief comments regarding the status of Regulatory and Legislative issues and other events related to DHP.

Dr. Reynolds-Cane also announced that the Annual Board Member Orientation was scheduled for September 28th.

EXECUTIVE DIRECTOR'S REPORT

Ms. Hahn began her report by stating that the agenda was on the lighter side for the meeting but the members would be very busy with 2 days of formal hearings and informal conferences.

Expenditure and Revenue Summary

Ms. Hahn stated that the beginning cash balance as of June 30, 2011 was \$26,516, revenue received for FY 12 was \$528,200 less the direct and allocated expenditures of \$600,484 leaving a cash balance as of May 31, 2012 of \$(45,768). Ms. Hahn anticipated the FY 12 year end budget to be approximately (116,000) and reminded the board that the regulations for a fee increase remain at the Secretary's office for approval.

Discipline Statistics

Ms. Hahn stated the board has 39 open cases; 15 of the 38 cases are in the Enforcement Division at the Investigative stage; 9 cases are in the Probable Cause stage, 4 cases at the APD level; 8 cases are in the informal stage; and 3 cases were in the formal stage. Ms. Hahn added 16 funeral board Orders are being monitored for compliance.

Licensee Statistics

Ms. Hahn reported that there are 1,470 Funeral Service Providers, 158 Funeral Interns, 448 Funeral Establishments, 5 Embalmers, 65 Funeral Directors, 325 Funeral Service Supervisors, 60 Branch Establishments, 94 Crematories, 26 Continuing Education Providers, 67 Courtesy Card Holders and 48 Surface Transportation and Removal Services.

Virginia Performs – 4th Quarter ending June 30, 2012

Ms. Hahn gave the following Virginia Performs results: 100% rating for issuing licenses in less than 30 days; a 100% rating for patient care cases closed within 250 days; customer satisfaction was at 100%; the clearance rate was at 50% vs. 700% during 3rd Qtr., the percent of cases closed within 250 days was at 100% and the pending caseload older than 250 days was 25%.

Presentations

Ms. Hahn reported that the following presentations had been given since the April Meeting:

- VFDA 124th Annual Convention
 - Bob Burger gave a report on Board Business
 - Lynne Helmick presented 1 hour on Laws & Regulations
- IFHV 2012 Annual Convention
 - Lynne Helmick will present 1 hour on Laws & Regulations

Pending Projects

- Virtual Funeral Homes - Ms. Hahn shared that staff are working on collecting information from the Conference on what other states are doing. She hopes to have information to share at the next meeting.
- Examination Review and Process Audit - Ms. Hahn stated that it is time again to perform a thorough examination audit to ensure that the questions include current information. She will notify the committee members once a date is scheduled to begin the process.

- FTC Possible Conflict – Ms. Hahn stated that it does appear that we are in conflict with FTC regarding direct cremation and alternative containers. She will place the matter for discussion on the agenda for the next meeting.
- Scanning Establishment Files - Ms. Hahn shared that Vicki Saxby and Annie Artis have been working on scanning all the funeral establishment files online.

2012/2013 Committee's

Ms. Hahn stated that Blair Nelsen asked the members for their committee requests but that he was going to defer making final decisions until new board member appointments were made. She added that the only changes Mr. Nelsen made were to replace his own position on the informal conference committee with Mr. Burger, and to have Mr. Vincent fill the alternate position.

Status on Carlos Howard

Ms. Hahn shared that Mr. Howard filed an appeal against the Board's decision made during the March 8, 2012 formal hearing and that the matter was now be handled by the Office of the Attorney General. Erin Barrett, Assistant Attorney General and Board Counsel confirmed that we had filed the record, including the transcript and a tentative court date was set for late August.

Legislative/Regulatory News

Ms. Hahn briefed the board with the following:

- H 378 was approved on April 4, 2012 which requires licensees to complete 5 hours per year, rather than 10 hours every two years. It also changes the one hour requirement per year in state laws and regulations to federal or state laws and regulations.
- The law became effective on July 2, 2012. The board will be asked to promulgate regulations for the new law during today's meeting.
- What was not included in the approved legislation was the CE exemption for first renewal year following license by exam.

Fee Increase

Ms. Hahn stated Ms. Yeatts would address the status of the fee increase during her report.

Calendar

Ms. Hahn announced the scheduled date for the next meeting in 2012 was October 16th and that she and Ms. Currier would try to avoid scheduling conflicts with other meetings or conferences when coordinating the 2013 calendar.

Report on Status of Regulations

Ms. Yeatts referred the members to the Chart of Regulatory Actions included in the agenda package:

18VAC65-20

- Identification of human remains – remain at the Governor's Office (599 days)
- NOIRA regarding fee increases – re-proposed remain at the Secretary's Office

18VAC65-30

- Fast-Track regarding termination of irrevocable trusts – remain at Governor's Office (599 days)

Ms. Yeatts commented that the longer the delay for approval of the re-proposed fee increase, the larger the shortfall will be to make up the difference.

Requirements for Continuing Education – Exempt Action

Upon a motion by Mr. Burger and properly seconded by Mr. Vincent, the board voted to adopt the following amendments as an Exempt Action in order to conform with the Code of Virginia:

18VAC65-20-151. Continued competency requirements for renewal of an active license.

A. Funeral service licensees, funeral directors or funeral embalmers shall be required to have completed a minimum of ~~40~~ 5 hours per year of continuing education offered by a board-approved sponsor for licensure renewal ~~in even years~~ in courses that emphasize the ethics, standards of practice, preneed contracts and funding, or federal or state laws and regulations governing the profession of funeral service ~~in Virginia~~. One hour per year shall cover compliance with laws and regulations governing the profession, and at least one hour per year shall cover preneed funeral arrangements.

B. Courses must be directly related to the scope of practice of funeral service. Courses for which the principal purpose is to promote, sell or offer goods, products or services to funeral homes are not acceptable for the purpose of credit toward renewal.

C. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

D. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

The motion passed unanimously.

Mr. Oman arrived at 11:00 a.m.

Notification to the Department of Veterans Services (§ 54.1-2808.1 & § 54.1-2808.2)

Discussion was made regarding the new requirement placed on funeral directors to notify the Virginia Department of Veterans Services of unclaimed cremains. The board agreed that it was important to inform the funeral licensee community about the new requirement since many may not be aware of it. Ms. Hahn stated that we would post the information on the website and include it in our presentations. She suggested that the associations also post the information on their websites and include it in their presentations.

Mr. Nelsen concluded that any questions regarding the new law be directed to Ms. Hahn or her staff.

§ 54.1-2808.1. Disposition of cremains.

Except as otherwise provided in § 54.1-2808.2, a funeral director may dispose of the cremains of an individual by interment, entombment, inurnment, or by scattering of the cremains, if after 120 days from the date of cremation, the contracting agent has not claimed the cremains or instructed the funeral director as to final disposition. The funeral director shall keep a permanent record of all cremains which identifies the method and site of final disposition. The costs and all reasonable expenses incurred in disposing of the cremains shall be borne by the contracting agent. Upon the disposition of the cremains, the funeral director shall not be liable for the cremains or for the method of final disposition. Except as otherwise provided in § 54.1-2808.2, any funeral director in possession of unclaimed cremains prior to July 1, 1993, may dispose of such cremains in accordance with the provisions of this section. However, no funeral director shall, without written permission of the contracting agent, dispose of cremains in a manner or a location in which the cremains of the deceased are commingled, except in the scattering of cremains at sea, by air, or in an area used exclusively for such purpose, or place, temporarily, the cremains of persons in the same container or urn.

For the purposes of this section, "contracting agent" means any person, organization, association, institution, or group of persons who contracts with a funeral director or funeral establishment for funeral services.

§ 54.1-2808.2. Identification of unclaimed cremains of veterans.

A. If the contracting agent has not claimed the cremains or instructed the funeral director as to final disposition within 90 days from the date of cremation, the funeral director shall provide names and any other identifying information of the unclaimed cremains to the Department of Veterans Services in order for the Department to determine if the unclaimed cremains are those of a veteran. The names and any personal identifying information submitted by a funeral director to the Department of Veterans Services in compliance with this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. Commencing July 1, 2014, the Department of Veterans Services shall notify the funeral director within 30 days of receipt of the information required by subsection A if the cremains are those of a veteran and, if so, whether such veteran is eligible for burial in a veterans cemetery in order to permit the transfer of the unclaimed cremains to a veterans cemetery.

C. No disposal of the unclaimed cremains of an eligible veteran shall be made until the funeral director has notified the Virginia Department of Veterans Services and has received a determination as to whether the cremains are those of an eligible veteran. Absent bad faith or malicious intent, no funeral director who transfers the cremains of a veteran to the Virginia Department of Veterans Services for purposes of disposition as provided in this section shall be liable for civil negligence.

Draft Legislation #1 (attachment #1)

Ms. Yeatts reviewed draft legislation for the 2013 general assembly. Upon a motion by Mr. Wray and properly seconded by Mr. Minter, the board voted to approve draft legislation #1 as proposed. The motion carried unanimously.

Draft Legislation #2

Following discussion, a motion was made by Mr. Minter and properly seconded by Mr. Wray to re-approve as amended, a bill to enact § 54.1-2810.1 of the Code of Virginia relating to the operation of a funeral establishment in an emergency situation:

1. That § 54.1-2810.1 of the Code of Virginia is enacted as follows:

§ 54.1-2810.1. Temporary operation of a funeral establishment.

If an emergency event prevents a licensed funeral establishment from conducting normal business operations, the establishment may request permission from the Board to operate temporarily out of another licensed funeral establishment. The request must be submitted electronically or in writing to the Board prior to temporary operation of the establishment and must include the circumstances of the emergency, a projected completion date for the repair, and the arrangements that have been agreed upon by both establishments involved.

The motion carried unanimously.

Ms. Yeatts concluded that the two proposed bills would be sent to interested parties for comment.

Guidance Document 65-2

DISPOSITION OF DISCIPLINARY CASES FOR PRACTICING ON EXPIRED LICENSES

The Board of Funeral Directors and Embalmers delegates to the Executive Director for the Board the authority to offer a prehearing consent order to resolve disciplinary cases in which a Funeral

Service Licensee or Funeral Service Establishment has been found to be practicing with an expired license.

Disciplinary Action for Practicing with an Expired License

The Board adopted the following guidelines for resolution of cases of a Funeral Service Licensee or Funeral Director or Embalmer only practicing with an expired license:

Cause	Possible Action
First offense; 90 days or less	Confidential Consent Agreement
First offense; 91 days to one year 180 days	Consent Order; Monetary Penalty of \$1,000

Disciplinary Action for Practicing with an Expired License

The Board adopted the following guidelines for resolution of cases of a Funeral Establishment practicing with an expired license:

<u>Cause</u>	<u>Possible Action</u>
<u>First offense; 90 days or less</u>	<u>Confidential Consent Agreement</u>
<u>First offense; 91 days to 180 days</u>	<u>Consent Order; Monetary Penalty of \$1,500</u>

Upon a motion by Mr. Oman and properly seconded by Mr. Vincent, the board voted to approve Guidance Document 65-2 regarding practicing on an expired license as amended.

The motion carried unanimously.

OTHER BUSINESS

Mr. Burger mentioned that while attending the VFDA Conference in Virginia Beach, he was approached by a Surface Transportation licensee who asked how he should handle questions from families about prices. After discussion, the board recommended that these individuals should not be discussing prices at all. It was also mentioned that obtaining permission for embalming does not require a price list and to refer any questions regarding prices to the Funeral Home.

Mr. Leonard asked if anyone would be attending the meeting on August 21st regarding the insurance bill. Ms. Hahn and Mr. Nelsen reminded the board members who plan on attending to be clear that their opinions are personal and do not in any way reflect the opinion of the Board.

ADJOURNMENT:

With no further business before the Board, the meeting adjourned at 11:14 a.m.

Blair Nelsen, President

Lisa R. Hahn, Executive Director

Date

Date

Virginia Board of Funeral Directors and Embalmers
2013 Session of the General Assembly
Draft Legislation #1

A bill to amend and reenact §§ 54.1-2802, 54.1-2806, 54.1-2814, and 54.1-2815 of the Code of Virginia, relating to the Board of Funeral Directors and Embalmers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2802, 54.1-2806, 54.1-2814, and 54.1-2815 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2802. Board; appointment; terms; vacancies; meetings; quorum.

The Board of Funeral Directors and Embalmers shall consist of nine members as follows: seven funeral service licensees of the Board with at least five consecutive years of funeral service practice in this Commonwealth immediately prior to appointment and two citizen members. The terms of office shall be for four years from July 1. Appointments shall be made annually on or before June 30 as the terms of the members respectively expire. Appointments to the Board should generally represent the geographical areas of the Commonwealth. The Board shall annually elect a president, a vice-president and a secretary-treasurer.

The Board shall hold at least two meetings each year. In addition, the Board may meet as often as its duties require. Five members shall constitute a quorum. ~~No less than quarterly, the Board shall offer examinations for licensure. Such examinations for licensure are not required to be held in conjunction with meetings of the Board.~~

§ 54.1-2806. Refusal, suspension or revocation of license.

The Board may refuse to admit a candidate to any examination, refuse to issue a license to any applicant and may suspend a license for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any of the following causes:

1. Conviction of any felony or any crime involving moral turpitude;
2. Unprofessional conduct which is likely to defraud or to deceive the public or clients;
3. Misrepresentation or fraud in the conduct of the funeral service profession, or in obtaining or renewing a license;
4. False or misleading advertising or solicitation;

5. Solicitation at-need or any preneed solicitation using in-person communication by the licensee, his agents, assistants or employees; however, general advertising and preneed solicitation, other than in-person communication, shall be allowed;
6. Employment by the licensee of persons known as "cappers" or "steerers," or "solicitors," or other such persons to obtain the services of a holder of a license for the practice of funeral service;
7. Employment directly or indirectly of any agent, employee or other person, on part or full time, or on a commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;
8. Direct or indirect payment or offer of payment of a commission to others by the licensee, his agents, or employees for the purpose of securing business;
9. Use of alcohol or drugs to the extent that such use renders him unsafe to practice his licensed activity;
10. Aiding or abetting an unlicensed person to practice within the funeral service profession;
11. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of;
12. Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery;
13. Violation of any statute, ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;
14. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to custody;
15. Knowingly making any false statement on a certificate of death;
16. Violation of any provisions of Chapter 7 (§ 32.1-249 et seq.) of Title 32.1;
17. Failure to comply with § 54.1-2812, and to keep on file an itemized statement of funeral expenses in accordance with Board regulations;
18. Knowingly disposing of parts of human remains, including viscera, that are received with the body by the funeral establishment, in a manner different from that used for final disposition of the body, unless the persons authorizing the method of final disposition give written permission that the body parts may be disposed of in a manner different from that used to dispose of the body;

19. Violating or failing to comply with Federal Trade Commission rules regulating funeral industry practices;

20. Violating or cooperating with others to violate any provision of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.), this chapter or the regulations of the Board of Funeral Directors and Embalmers or the Board of Health;

21. Failure to comply with the reporting requirements as set forth in § 54.1-2817 for registered funeral service interns;

22. Failure to provide proper and adequate supervision and training instruction to registered funeral service interns as required by regulations of the Board;

23. Violating any statute or regulation of the Board regarding the confidentiality of information pertaining to the deceased or the family of the deceased or permitting access to the body in a manner that is contrary to the lawful instructions of the next-of-kin of the deceased;

24. Failure to include, as part of the general price list for funeral services, a disclosure statement notifying the next of kin that certain funeral services may be provided off-premises by other funeral service providers;

25. Disciplinary action against a license, certificate or registration issued by another state, the District of Columbia or territory or possession of the United States; ~~and~~

26. Failure to ensure that a dead human body is maintained in refrigeration at no more than approximately 40 degrees Fahrenheit or embalmed if it is to be stored for more than 48 hours prior to disposition. A dead human body shall be maintained in refrigeration and shall not be embalmed in the absence of express permission by a next of kin of the deceased or a court order; and

27. Incompetence to practice his profession with safety to his clients and the public.

§ 54.1-2814. Examination.

Each applicant for license for the practice of funeral service shall be examined in writing on:

1. Basic and health sciences including anatomy, chemistry, bacteriology, pathology, hygiene and public health;

2. Funeral service arts and sciences including embalming and restorative art;

3. Funeral service administration including accounting, funeral law, psychology, and funeral principles, directing and management.

~~The Board may recognize other examinations that it considers equivalent to its examination.~~

§ 54.1-2815. Application for license; ~~how license signed~~; duration.

All applications for examination for a license for the practice of funeral service shall be upon forms furnished by the Board.

~~All licenses shall be signed by the president and secretary of the Board and stamped with the seal of the Board.~~

All licenses shall be issued or renewed for a period prescribed by the Board, not exceeding two years.